

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOEL FLAKES,

Plaintiff,

v.

JANE SONDALLE,

Defendant.

ORDER

04-C-189-C

On November 10, 2005, this court received plaintiff's motion to compel discovery, which he signed on November 6, 2005. *See* dkt. 88. I am denying the motion.

Plaintiff did not specify what discovery he seeks to compel, but I surmise he wants information responsive to his October 3, 2005 interrogatories and October 3, 2005 requests for production of x-rays. *See* dkts. 74 & 75. I further surmise that plaintiff drafted these discovery requests before receiving this court's September 29, 2005 order granting summary judgment to the state defendants on all but plaintiff's retaliation claim against defendant Sondalle. *See* dkt. 73. On October 19, 2005, three weeks before plaintiff's motion to compel, the court dismissed plaintiff's claims against the private defendant. *See* dkt. 83.

As a result of the court having pared plaintiff's lawsuit down to one nub of a claim, virtually all of plaintiff's discovery requests are irrelevant to the issues remaining to be tried. Therefore, the defendant is not obliged to respond to them. Those few remaining interrogatories that might bear on plaintiff's retaliation claim suffer from two defects.

First, plaintiff prepared and served his discovery requests too late to be entitled to any response at all. At the December 9, 2004 telephonic preliminary pretrial conference, this court set the discovery cutoff for October 14, 2005. The court advised plaintiff in the written order that followed:

Rules 26 through 37 of the Federal Rules of Civil Procedure explain how you may get information and documents from the defendants and how the defendants may get information and documents from you. You should read Rules 26 through 37 **now** so that you understand how this works, and so that you can begin taking discovery in this case.

See Dkt. 25 at 9, emphasis in original. Rule 33 (b)(3) allows a party 30 days to respond to its opponent's interrogatories. Even assuming, unrealistically, that defendant's attorney received plaintiff's request on the day plaintiff signed it, defendant had until November 2, 2005 to respond. This was 19 days after discovery ended and less than two weeks before the trial was supposed to begin (recently we moved the trial to November 21). Because plaintiff waited much too long to prepare and serve his discovery requests on defendant he is not entitled to answers.

Second, the few interrogatories that are potentially relevant to plaintiff's retaliation claim are so argumentative that defendant would not be required to answer them. Even if she did answer these interrogatories, she certainly would disagree with them, so that plaintiff would gain no useful information for trial. Take, for example, plaintiff's interrogatory 16:

Do the defendant prison authorities deny that due to the plaintiff's complaints that they used vindictive and retaliatory tactics against him to silence him when he filed his institutional

complaint against social worker Carol Wetzel and part of those vindictive and retaliatory tactics used by defendant Sondalle a non-medical staff member who was allowed to dictate to the health services unit manager Tom Edwards R.N. And Dr. Kaplan how she wanted the plaintiff treated?

Dkt. 74 at 5.

The only answer that plaintiff reasonably could have expected to this interrogatory was for Sondalle to continue to deny that she used vindictive and retaliatory tactics in order to silence him. So too with interrogatories 21 and 22, which touch upon relevant topics but essentially ask Sondalle to admit that she violated plaintiff's civil rights. Clearly, she does not intend to admit this, which is why this claim is going to trial next week.

In short, plaintiff is not entitled to any relief on his demand for more discovery from the only remaining defendant.

Therefore, it is ORDERED that plaintiff's motion to compel is DENIED.

Entered this 15th day of November, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge